THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No. 18401 of 2001

O R D E R :

Heard Sri A.K. Jayaprakash Rao, learned counsel appearing for the petitioner and Sri V.T.M. Prasad, learned standing counsel appearing on behalf of the second respondent and the learned Government Pleader for Labour making appearance on behalf of the first respondent.

The petitioner herein, who has been working as a Conductor, filed this Writ Petition, *inter alia,* seeking to challenge the nil award passed in I.D. No. 192 of 2000 (old I.D. Nos. 448 of 2000 & 121 of 1998), dated 20.06.2001 as published in Gazette on 30.07.2001 as illegal.

The case of the petitioner is that he was initially appointed as a Conductor on 06.04.1991 and has been in service with good record. However, in pursuance of a charge sheet dated 27.01.1998 alleging that the petitioner suppressed the information regarding the previous service and also removal therefrom as a Conductor with the same corporation sought to be constituting a misconduct, and on filing of explanation thereto and after holding an enquiry, the petitioner was removed from service as per the order dated 28.04.1998, whereupon he sought reference under Section 2-A(2) of the Industrial Disputes Act, and the same was taken up by the first respondent and ultimately after holding an enquiry wherein neither side let in any evidence, the impugned award was passed stating that it is not a fit case to interfere with the punishment as the same is neither disproportionate nor there is any acceptable explanation for the charges.

Sri A.K. Jayaprakash Rao, learned counsel appearing on behalf of the petitioner submits that having regard to the fact that there is no specific column in the very application made seeking for employment, question of suppression does not arise and further this court has already held in Writ Petition No.10371 of 1987, dated 28.07.1987 to the effect that non-disclosure of previous employment is not a fatal nor does it constitute misconduct and therefore, these aspects have not properly considered during the disciplinary enquiry in spite of filing explanation nor by the first respondent after the reference of the dispute.

Sri V.T.M. Prasad, learned standing counsel appearing on behalf of the second respondent, repelling the aforesaid contentions, submits that irrespective of the fact that there is any column or not in the application, it is the obligation on the part of the petitioner to state his previous service record especially the factum of removal, which itself is sufficient enough to constitute a misconduct for removal. Therefore, admittedly the petitioner, having not furnished the said information and suppressed the same, is not entitled to any indulgence even in regard to the quantum of punishment.

Considering the submissions made and on perusal of the material, the question which falls for consideration is as to whether on the facts and circumstances, suppression in regard to previous employment and removal therefrom, amounts to misconduct and the punishment of removal for such act, is justified ?

There is no dispute to the fact that the petitioner was appointed as a Conductor on 06.04.1991 and had been in service. There is also no dispute that the petitioner did not disclose about his previous appointment with the very same corporation in Medak and Ranga

Reddy divisions where he was removed from service in regard to certain allegations as found during a check made while he was conducting a bus. Under its own Regulations framed by the second respondent-corporation, there is no specific provision in regard to the information about previous service nor there is any specific column provided, in the application format as prescribed made at the time of induction, requiring the applicant to furnish any such information. However, it is to be noticed that as per the Regulation 28 thereof, failure on the part of the employee to give full and correct information regarding his previous history and record or regarding any matter connected with the Corporation in connection with any offence committed by himself or by other person, within his knowledge, when demanded by a superior officer, constitutes a misconduct. On reading thereof, as and when any such demand is made, the required information has to be furnished and not otherwise. As rightly pointed on behalf of the petitioner, this Court has already taken a view in W.P. No. 10371 of 1987, dated 28.07.1987 that such non-disclosure would not constitute any misconduct. Further, in the latest decision in *Secy. Deptt. Of Home Secy., A.P. & others v. B.Chinnam Naidu* wherein the Apex Court held that whether a person is fit to be appointed or not, is a matter within the special domain of the Government; for denying somebody appointment after he is selected though he has no right to be appointed has to be governed by some statutory provisions. The claim of the petitioner also gets support from the decision reported in *Rasiklal Vaghajibhai Patel Vs. Ahmedabad Municipal Corporation & another* and decision of this Court in Writ Petition No. 10371 of 1987, dated 28.07.1987. Therefore, from the above, it only transpires that any such disqualification has to be specifically provided for under the statutory rules or Regulations as applicable to the institution. No other Regulation has been brought before to this Court by the second respondent, contemplating necessity to furnish any such information at the time of appointment in the format as prescribed or any other Regulation which constitutes any misconduct for such nondisclosure. In the absence of the same, it is to be held that the impugned action on the part of the second

respondent in removing the petitioner from service is totally outside the powers as conferred under Law. Accordingly, it is to be held that the orders of removal are liable to be set aside on the ground that non-disclosure of previous employment does not amount to misconduct as per the Regulations, since it is not provided for.

The Writ Petition is, accordingly, allowed. The impugned award in I.D. No. 192 of 2000, dated 20.06.2001 on the file of the first respondent is set aside, consequently setting aside the orders of removal dated 28.04.1998 of the second respondent. The petitioner is entitled to be reinstated with all the back wages and all other benefits to which he is entitled under Law. No costs.

(B.Prakash Rao, J.)

25.02.2005

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on

Friday the twenty fifth day of February Two thousand and five.

…. Registrar